



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2010-1015; FRL-9739-2]

Approval and Promulgation of Implementation Plans; North Carolina 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve in part and conditionally approve in part portions of the State Implementation Plan (SIP) submissions, submitted by the State of North Carolina, through the Department of Environment and Natural Resources (NC DENR), Division of Air Quality (DAQ), as demonstrating that the State meets the SIP requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. North Carolina certified in two separate submissions that its SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM_{2.5} NAAQS are implemented, enforced, and maintained in North Carolina (hereafter referred to as “infrastructure submissions”). With the exception of elements 110(a)(2)(C), 110(a)(2)(D)(i), 110(a)(2)(E)(ii) and 110(a)(2)(J), North Carolina’s infrastructure submissions, provided to EPA on April 1, 2008, and September 21, 2009, address all the required infrastructure elements for the 1997 annual and

2006 24-hour PM_{2.5} NAAQS. With respect to sections 110(a)(2)(C), 110(a)(2)(E)(ii) and 110(a)(2)(J), EPA is conditionally approving these requirements.

DATES: This rule will be effective on [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2010-1015. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 38652), EPA promulgated a new annual PM_{2.5} NAAQS and on October 17, 2006 (71 FR

61144), EPA promulgated a new 24-hour PM_{2.5} NAAQS. On July 24, 2012, EPA proposed to approve North Carolina's April 1, 2008, and September 21, 2009, infrastructure submissions for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. *See* 77 FR 43196. A summary of the background for today's final action is provided below. *See* EPA's July 24, 2012, proposed rulemaking at 77 FR 43196 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. The data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous PM NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The

requirements that are the subject of this final rulemaking are listed below¹ and in EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards." and September 25, 2009, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards."

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.²
- 110(a)(2)(D): Interstate transport.³
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁴

¹ Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment plan requirements of section 110(a)(2)(C).

² This rulemaking only addresses requirements for this element as they relate to attainment areas.

³ Today's final rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 and 2006 PM_{2.5} NAAQS.

- 110(a)(2)(J): Consultation with government officials; public notification; and prevention of significant deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. This Action

Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. North Carolina certified that the North Carolina SIP contains provisions that ensure the 1997 annual and 2006 24-hour PM_{2.5} NAAQS are implemented, enforced, and maintained in North Carolina.

With the exceptions of elements 110(a)(2)(C), 110(a)(2)(D)(i), 110(a)(2)(E)(ii) and 110(a)(2)(J) related to PSD requirements, EPA is taking final action to approve North Carolina’s infrastructure submissions as demonstrating that the State’s implementation plan meets portions of the section 110(a)(2) infrastructure requirements for both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. North Carolina submitted a letter to EPA on July 10, 2012, to address certain outstanding requirements related to the PM_{2.5} standard for its PSD program and committing to providing the necessary SIP revision to address the requirements of 110(a)(2)(C) and 110(a)(2)(J) PSD requirements for which the SIP is currently deficient. This letter of

⁴ This requirement was inadvertently omitted from EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards,” but as mentioned above is not relevant to today’s final rulemaking.

commitment meets the requirements of section 110(k)(4) of the CAA, 42 U.S.C. § 7410(k)(4), and as such, EPA is today finalizing its proposed action to conditional approve these elements. See EPA's July 24, 2012, proposed rulemaking at 77 FR 43196 for more detail. If North Carolina fails to submit these revisions by October 16, 2013, today's conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, today's conditionally approved submittal will also be disapproved at that time. If EPA approves the new submittal, North Carolina's infrastructure SIP will be fully approved, with the exceptions noted above, and those approved elements will replace the relevant conditionally-approved elements in the SIP.

In addition, EPA is today relying upon an earlier commitment by North Carolina to address the CAA section 128(a)(1) and (2) requirements in order to conditionally approve its 1997 annual and 2006 24-hour PM_{2.5} NAAQS infrastructure SIPs with respect to section 110(a)(2)(E)(ii). North Carolina's earlier commitment, which was made in connection with the State's 2008 8-hour Ozone infrastructure SIP submission, committed the State to addressing CAA section 128(a)(1) and (2) requirements by submitting a SIP revision to EPA to address these requirements by February 2, 2013. As the underlying requirements of section 128 are the same for purposes of the 2008 8-hour Ozone NAAQS and the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, EPA is today relying upon this earlier commitment to conditionally approve the

State's 110(a)(2)(E)(ii) infrastructure SIPs for purposes of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. As with the conditional approvals for the other elements discussed above, if the State fails to submit this revision by February 6, 2013, a final conditional approval would then automatically become a disapproval on that date and EPA will issue a finding of disapproval.

With the exception of 110(a)(2)(D)(i), related to interstate transport, EPA is today taking final action to determine that North Carolina's infrastructure submissions, provided to EPA on April 1, 2008, and September 21, 2009, and the January 11, 2012, and July 3, 2012, letters of commitment address all the required infrastructure elements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.⁵

III. EPA's Response to Comments

EPA received adverse comments from the Sierra Club on the July 24, 2012, proposed rulemaking to approve North Carolina's April 1, 2008, and September 21, 2009, infrastructure submissions as meeting the requirements of certain sections of 110(a)(1) and (2) of the CAA for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. A summary of the comments and EPA's response are provided below.

Comment 1: The Commenter contends that North Carolina's SIP does not contain the requisite enforceable limits for PM_{2.5}, and therefore, EPA cannot approve the State's infrastructure SIP submission with respect to section 110(a)(2)(A).

⁵ EPA intends to act on North Carolina's outstanding section 110(a)(2)(D)(i) requirements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS in a separate action.

The Commenter asserts that North Carolina's SIP does not distinguish between filterable and condensable PM to demonstrate that condensable PM_{2.5} emissions are limited and monitored. In addition, the Commenter states that North Carolina regulations do not currently provide adequate enforceable limitations for PM_{2.5} emissions from individual sources. In support of this position, the Commenter notes that the North Carolina SIP addresses emissions of particulate matter generally, and does not distinguish between PM₁₀ and PM_{2.5}. The Commenter also references the particulate matter maximum emission rates for two coal-fired power plants by way of example and argues that because test methods, such as Reference Test Method 5, do not test for condensable PM, as a practical matter, the SIP does not currently contain PM_{2.5} emissions limits for sources that have not recently undergone new source review. The Commenter asserts that, as a result, the SIP does not ensure specific sources in North Carolina maintain the PM_{2.5} NAAQS in attainment and unclassifiable areas. The Commenter concludes that this constitutes a SIP deficiency germane to EPA's determination respecting the sufficiency of the State's infrastructure SIP for purposes of section 110(a)(2)(A).

Response 1: EPA disagrees with the Commenter's contention that the State's infrastructure SIP submission is not approvable with respect to section 110(a)(2)(A) because it does not contain adequate enforceable emissions limitations on PM_{2.5}.

With respect to the Commenter's specific concerns about the adequacy of emissions limitations at stationary sources, the Commenter is incorrect with respect both to the scope of what is germane to an action on an infrastructure SIP and with respect to when certain regulatory requirements for stationary sources became operative. This comment pertains to EPA's action

on an infrastructure SIP, which must meet the general structural requirements described in section 110(a)(2)(A). Section 110(a)(2)(A) of the CAA reads as follows:

Each implementation plan submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing. Each such plan shall include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

The Commenter seems to believe that in the context of an infrastructure SIP submission, section 110(a)(2)(A) explicitly requires that a state adopt all possible new enforceable emission limits, control measures and other means developed specifically for attaining and maintaining the new NAAQS within the state.

EPA does not believe that this is a reasonable interpretation of the provision with respect to infrastructure SIP submissions. Rather, EPA believes that different requirements for SIPs become due at different times depending on the precise applicable requirements in the CAA. For example, some state regulations are required pursuant to CAA section 172(b), as part of an attainment demonstration for areas designated as nonattainment for the standard. The timing of such an attainment demonstration would be after promulgation of a NAAQS, after completion of designations, and after the development of the applicable nonattainment plans. The Commenter seems to believe that EPA should disapprove a states infrastructure SIP if the state has not already developed all the substantive emissions limitations that may ultimately be required for all

purposes, such as attainment and maintenance of the NAAQS as part of an attainment plan for a designated nonattainment area.

The Commenter focuses upon the adequacy of specific stationary source maximum emission rates in the North Carolina SIP – specifically the existing emissions rates for the Allen and Asheville coal-fired power plants provided at 15A N.C. Admin. Code 02D.0536 - to support its argument that the SIP does not require adequate enforceable emissions limitations for PM_{2.5} for existing sources. As described above, for purposes of approving North Carolina's infrastructure submittal as it relates to section 110(a)(2)(A), EPA's evaluation is limited to whether the State has adopted, as necessary and appropriate, enforceable emission limitations and other control measures to meet applicable structural requirements of the CAA. Today's action does not involve source specific evaluations of particular emissions limits or whether the state has correctly imposed emissions limitations on each stationary source. Moreover, EPA disagrees that the Allen and Asheville coal-fired power plant examples cited by the Commenter demonstrate a SIP deficiency germane to an EPA approval action respecting infrastructure 110(a)(2)(A) requirements. The Commenter has not identified how these maximum emissions limits, which were approved into the SIP on February 14, 1996, demonstrate that North Carolina has not sufficiently addressed the treatment of condensables in the State consistent with EPA guidance and the requirements of the CAA. In the implementation regulations for the PM_{2.5} NAAQS, EPA separately authorized states to elect not to address condensable emissions in their air pollution programs until on or after January 1, 2011.⁶ Thus, the State was not required to

⁶ See Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}), 73 FR 28321 (May 16, 2008); 40 CFR 51.166(b)(49)(vi); 40 CFR 52.21(b)(50)(vi).

address condensables at the time these maximum emission rates were incorporated into the SIP. The State's compliance with what EPA authorized with respect to condensables is not grounds for disapproval of the state's infrastructure SIP submission.

Likewise, the fact that existing sources which have not gone through new source review in recent years are not subject to PM_{2.5} emissions limits is not grounds for disapproving section 110(a)(2)(A). As referenced above, consistent with EPA authorization, states may elect not to address condensable emissions in their air pollution programs until on or after January 1, 2011. The fact that existing sources would not be subject to such requirements prior to this applicability date is not a grounds upon which to disapprove the infrastructure SIP submission with respect to section 110(a)(2)(A). EPA believes that the better approach to ensure that sources are evaluated in due course for condensable emissions as required by federal regulations after January 1, 2011, is through revisions to the PSD program consistent with the requirements of sections 110(a)(2)(C), (D)(i)(II) and (J). As discussed in the proposal for today's action, EPA is today conditionally approving North Carolina's infrastructure SIP submission as it relates to the section 110(a)(2)(C) and (J) PSD requirements. This conditional approval is based upon a commitment by the State to make a submission to meet current PSD program requirements, including proper evaluation of condensable emissions on an ongoing basis, in future regulatory actions, such as PSD permits. In addition, EPA notes that as a matter of State law, North Carolina has already elected to incorporate by reference EPA's own regulations relevant to the May 16, 2008, PM_{2.5} NSR Implementation Rule.⁷ Thus, as a practical matter, EPA believes that

⁷ See North Carolina's PSD regulations at 15A NC ADMIN. CODE 2D.0530, incorporates by reference 40 CFR 51.166(b)(49)(vi), which requires that condensable emissions be accounted for in applicability in determinations and in establishing emissions limitations for PM_{2.5}.

sources will in fact be evaluated for condensable emissions in the interim prior to the SIP submission from the State to meet the conditional approval requirement for section 110(a)(2)(C) and (J).

For purposes of section 110(a)(2)(A), and for purposes of an infrastructure SIP submission, EPA believes that the proper inquiry is whether the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon it. As stated in EPA's proposed approval for this rule, to meet section 110(a)(2)(A), North Carolina submitted a list of existing emission reduction measures in the SIP that control PM emissions. These include all the required measures previously adopted for the control of PM. The Commenter identifies a number of ways in which it believes that the State's implementation plan fails to meet such current requirements, but EPA concludes that the Commenter has not identified any deficiency that justifies disapproval of the infrastructure SIP submission in this action.

Comment 2: The Commenter states that North Carolina's SIP does not meet the requirements of CAA section 110(a)(2)(D)(ii) because the North Carolina regulations cited in the proposed rule do not make any mention of notification requirements and fail to make any other reference to interstate or international transport.

Response 2: This comment pertains to infrastructure requirements described in section 110(a)(2)(D)(ii) of the CAA. Section 110(a)(2)(D)(ii) of the CAA requires that "each implementation plan submitted by a State under this Act shall... contain adequate provisions... insuring compliance with applicable requirements of sections [126] and [115]... relating to

interstate and international pollution.” EPA disagrees with the Commenter’s assertion that none of the state regulations referenced in the proposed rule make any mention of this notification requirement, nor make any other reference to interstate or international transport issues.”

Specifically, NCAC 2D.0530, *Prevention of Significant Deterioration*, states that “[a] permit application subject to this Regulation shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q).” 40 CFR 51.166(q) requires that “a copy of the notice of public comment to the applicant, the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: Any other State or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification.” The Commenter has not provided how the above-described notification requirements fail to address the requirements under section 110(a)(2)(D)(ii). In addition, the Commenter does not identify any submittal required by section 110(a)(2)(A) that is overdue or deficient.

The Commenter also alleges deficiencies with respect to section 110(a)(2)(D)(ii) and section 115 international transport requirements, without articulating any specific reason. EPA does not believe that a state has any SIP requirements with respect to section 115 unless EPA has previously made a finding that emissions from the state cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country. EPA has made no such finding with respect to North Carolina, and thus the infrastructure SIP of that state need not contain or reference any provisions to address that requirement substantively.

Comment 3: The Commenter states that, although EPA is proposing to conditionally approve North Carolina's infrastructure submissions with respect to sections 110(a)(2)(C), (D) and (J), North Carolina's SIP must include PM_{2.5} increments and significant emission rates under the PSD Program before EPA can fully approve the State's PM infrastructure submissions. The Commenter also states that any future submission by North Carolina that includes the significant impact levels for PM_{2.5} cannot be approved by EPA for the reasons the Commenter articulated in *Sierra Club v. EPA*, 10-1413 (D.C. Circuit).

Response 3: EPA first notes that the Commenter mischaracterizes the scope of EPA's proposed conditional approval of North Carolina's infrastructure submissions. As described in the proposed rule for today's action, EPA only proposed to conditionally approve sections 110(a)(2)(C) and (J) as they relate to PSD requirements, and section 110(a)(2)(E)(ii). *See* 77 FR 43196. EPA did not propose any action respecting section 110(a)(2)(D)(i) in the August 24, 2012 proposed rule, and proposed approval of section 110(a)(2)(D)(ii) requirements. *See* 77 FR 43198, note 3; 43202.

With respect to the Commenter's statements as they relate to EPA's proposed conditional approval of sections 110(a)(2)(C) and (J) related to PSD requirements, EPA agrees that presently the North Carolina SIP does not contain the requisite significant emissions rate provisions necessary for EPA to approve these sections of the State's infrastructure SIP submissions. As such, EPA proposed conditional approval for sections 110(a)(2)(C) and (J) consistent with EPA's authority under section 110(k)(4), and based upon a commitment by the State to address these deficiencies within one year. As described in section 110(k)(4), should North Carolina fail

to meet its commitment to address these deficiencies, a final conditional approval for these elements would become a disapproval. The Commenter has failed to state a reason why this proposed action is inconsistent with the requirements of the CAA.

In addition, EPA disagrees with Commenter's suggestion that EPA must approve North Carolina's PM_{2.5} increments prior to fully approving sections 110(a)(2)(C) and (J). Pursuant to the 2010 PM_{2.5} NSR Rule and CAA section 166(b), States were not required to submit a revised SIP addressing the PM_{2.5} increments until July 20, 2012. The Agency proposed action on North Carolina's infrastructure SIP in a notice signed on July 13, 2012.⁸ Therefore, on the date that the proposed rule was signed by the Agency, the PM_{2.5} increments were not required to be included in the North Carolina SIP in order for North Carolina to meet the PSD requirements of sections 110(a)(2)(C) and (J) of the Act.

The Commenter's concerns relate to the timing of agency action on collateral, yet related, SIP submissions. These concerns highlight an important overarching question that the EPA has to confront when assessing the various infrastructure SIP submittals addressed in the proposed rule: how to proceed when the timing and sequencing of multiple related SIP submissions impact the ability of the State and the Agency to address certain substantive issues in the infrastructure SIP submission in a reasonable fashion.

It is appropriate for EPA to take into consideration the timing and sequence of related SIP submissions as part of determining what it is reasonable to expect a state to have addressed in an

⁸ Although the notice was published by the Federal Register on July 24, 2012, the notice was signed by the Regional Administrator on July 13, 2012, before the statutory deadline for submission of the SIP revision addressing the PM_{2.5} increments.

infrastructure SIP submission for a NAAQS at the time when EPA acts on such submission. EPA has historically interpreted section 110(a)(2)(C) and section 110(a)(2)(J) to require EPA to assess a State's infrastructure SIP submission with respect to the then-applicable and federally enforceable PSD regulations required to be included in a State's implementation plan at the time EPA takes action on the SIP. However, EPA does not consider it reasonable to interpret section 110(a)(2)(C) and section 110(a)(2)(J) to require EPA to propose to disapprove a State's infrastructure SIP submissions because the State had not yet, at the time of proposal, made a submission that was not yet due for the 2010 PM_{2.5} NSR Rule. To adopt a different approach by which EPA could not act on an infrastructure SIP, or at least could not approve an infrastructure SIP, whenever there was any impending revision to the SIP required by another collateral rulemaking action would result in regulatory gridlock and make it impracticable or impossible for EPA to act on infrastructure SIPs if EPA is in the process of revising collateral PSD regulations. EPA believes that such an outcome would be an unreasonable reading of the statutory process for the infrastructure SIPs contemplated in section 110(a)(1) and (2).

EPA acknowledges that it is important that these additional PSD program revisions be evaluated and approved into the State's SIP in accordance with the CAA, and EPA intends to address the PM_{2.5} increments in a subsequent rulemaking.

Finally, EPA notes that the Commenter's statements regarding future EPA action on potential North Carolina PM_{2.5} significant impact level submittals are not relevant to today's action, which as described in the proposed rule, is not approving any specific rule, but rather proposing that North Carolina's already-approved SIP meets – or in the case of the elements proposed for conditional approval, will meet – certain CAA requirements.

Comment 4: The Commenter states that EPA cannot approve future North Carolina submissions to meet CAA section 110(2)(D)(i) interstate transport and visibility obligations if it relies on the now vacated Cross State Air Pollution Rule to satisfy such obligations.

Response 4: As described in the proposed rule for today's action, EPA is not taking any action with respect to North Carolina's infrastructure SIP submissions related to section 110(a)(2)(D)(i). Comments related to EPA action on SIP submissions from North Carolina to address the requirements of 110(a)(2)(D)(i), including the interference with visibility prong in section 110(a)(2)(D)(i)(II), are not relevant to today's action.

IV. Final Action

As already described, North Carolina has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that 1997 annual and 2006 24-hour PM_{2.5} NAAQS are implemented, enforced, and maintained in North Carolina. EPA is taking final action to approve in part, and conditionally approve in part, North Carolina's April 1, 2008, and September 21, 2009, submissions, with noted exceptions, for 1997 annual and 2006 24-hour PM_{2.5} NAAQS because these submissions are consistent with section 110 of the CAA. Today's action is not approving any specific rule, but rather making a determination that North Carolina's already approved SIP meets certain CAA requirements.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for

reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 27, 2012

A. Stanley Meiburg

Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II —North Carolina

2. Section 52.1770(e) is revised to read as follows:

§ 52.1770 Identification of plan.

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EPA-Approved North Carolina Non-regulatory provisions

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
Capital Area, North Carolina Interagency Transportation Conformity Memorandum of Agreement	1/1/2002	12/27/2002	67 FR 78986	
Durham-Chapel Hill Interagency Transportation Conformity Memorandum of Agreement	1/1/2002	12/27/2002	67 FR 78986	
Winston-Salem Interagency Transportation	1/01/2002	12/27/2002	67 FR 78986	

Conformity Memorandum of Agreement				
High Point Interagency Transportation Conformity Memorandum of Agreement	1/01/2002	12/27/2002	67 FR 78986	
Greensboro Interagency Transportation Conformity Memorandum of Agreement	1/01/2002	12/27/2002	67 FR 78986	
Gaston, North Carolina Interagency Transportation Conformity Memorandum of Agreement	1/1/2002	12/27/02	67 FR 78986	
Mecklenburg-Union Interagency Transportation Conformity Memorandum of Agreement	8/7/2003	9/15/2003	68 FR 53887	
10 Year Maintenance Plan Update for the Raleigh/Durham Area	6/4/2004	9/20/2004	69 FR 56163	
10 Year Maintenance Plan Update for	6/4/2004	9/20/2004	69 FR 56163	

the Greensboro/Winston-Salem/High Point Area				
Attainment Demonstration of the Mountain, Unifour, Triad and Fayetteville Early Action Compact Areas	12/21/2004	9/21/2005	70 FR 48874	
Charlotte, Raleigh-Durham, and Winston-Salem Carbon Monoxide Second 10-Year Maintenance Plan	3/18/05	3/24/06	71 FR 14817	
8-Hour Ozone Maintenance plan for the Rocky Mount, North Carolina area (Edgecombe and Nash Counties)	6/19/2006	11/6/2006	71 FR 64891	
8-Hour Ozone Maintenance plan for the Raleigh-Durham-Chapel Hill, North Carolina area (Durham, Franklin, Granville, Johnston,	6/7/2007	12/26/2007	72 FR 72948	

Orange, Person and Wake Counties in their entirety, and Baldwin, Center, New Hope and Williams Townships in Chatham County)				
1-Hour Ozone Maintenance plan revision for the Greensboro/Winston-Salem/High Point area (Davidson, Forsyth, and Guilford counties and a portion of Davie County)	2/4/2008	4/8/2008	73 FR 18963	
8-Hour Ozone Maintenance Plan for the Great Smoky Mountains National Park Area	7/24/2009	12/07/2009	74 FR 63995	
1997 Annual PM2.5 Maintenance Plan for the Hickory, North Carolina Area (Catawba County)	12/18/2009	11/18/2011	76 FR 71452	
1997 Annual PM2.5 Maintenance	12/22/2010	11/18/2011	76 FR 71452	

nce Plan for the Hickory, North Carolina Area—MOVES Update				
1997 Annual PM2.5 Maintenance Plan for the Greensboro, North Carolina Area (Davidson and Guilford Counties)	12/18/2009	11/18/2011	76 FR 71455	
1997 Annual PM2.5 Maintenance Plan for the Greensboro, North Carolina Area—MOVES Update	12/22/2010	11/18/2011	76 FR 71455	
North Carolina 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards	12/12/2007	2/6/2012	77 FR 5703	
1997 8-Hour Ozone 110(a)(1) Maintenance Plan for the Triad Area	4/13/2011	3/26/2012	76 FR 3611	
Supplement to 110(a)(1) Maintenance Plan for the	5/18/2011	3/26/2012	76 FR 3611	

Triad Area				
North Carolina portion of bi-state Charlotte; 1997 8-Hour Ozone 2002 Base Year Emissions Inventory	11/12/2009	5/4/2012	77 FR 26441.	
Regional Haze Plan	11/17/2007	6/27/2012	77 FR 38185.	
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards	4/1/2008	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	With the exception of section 110(a)(2)(D)(i). With respect to sections 110(a)(2)(C) related to PSD requirements, 110(a)(2)(E)(ii) and 110(a)(2)(J) related to PSD requirements, EPA conditionally approved these requirements.
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards	9/21/2009	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]	With the exception of section 110(a)(2)(D)(i). With respect to sections 110(a)(2)(C) related to PSD requirements, 110(a)(2)(E)(ii) and 110(a)(2)(J) related to PSD requirements, EPA

				conditionally approved these requirements.
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3. Section 52.1773 is amended by redesignating the existing text in § 52.1773 as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.1773 Conditional approval.

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(b) North Carolina submitted a letter to EPA on July 10, 2012, with a commitment to address the State Implementation Plan deficiencies regarding requirements of Clean Air Act sections 110(a)(2)(C) and 110(a)(2)(J) as they both relate to Prevention of Significant Deterioration (PSD) infrastructure requirements for the 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standards. EPA is conditionally approving North Carolina's commitment to address outstanding requirements promulgated in the New Source Review (NSR) PM_{2.5} Rule related to the PM_{2.5} standard for their PSD program and committing to providing the necessary SIP revision to address these NSR PM_{2.5} Rule requirements. If North Carolina fails to submit these revisions by October 16, 2013, the conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval.

[FR Doc. 2012-25301 Filed 10/15/2012 at 8:45 am; Publication Date: 10/16/2012]